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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,673	03/12/2001	Gary P. Rochelle	AQTP116898	3661

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CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC  
1420 FIFTH AVENUE  
SUITE 2800  
SEATTLE, WA 98101-2347

EXAMINER

BOCHNA, DAVID

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/805,673

Applicant(s)

ROCHELLE, GARY P.

Examiner

David E. Bochna

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 and 23-27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 10-19, 23, 24, 26 and 27 is/are allowed.  
6) ☒ Claim(s) 1-9, 25 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4-6 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the inlet and outlet end portions of the pipe section" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the inlet end portion" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 25 recites the limitation "the first and second fittings " and "engagement surfaces" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 3-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Kowalski.

In regard to claim 1, Kowalski discloses a fitting 34 and pipe section assembly (10, 22,

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24) that is capable of being installed in tubing of a jetted bath to render the tubing adaptable to accept a close fit device, comprising:

a pipe section (22, 24, 10) having a center segment 10 integrally formed (see column 2, lines 6-9) with inlet and outlet end portions 22, 24 of the pipe section for fluid flow coupling to an inlet 18 and an outlet 20 of the tubing;

wherein the pipe section includes indicia 36 (the weld bumps are marks or indicia on the surface of the pipe 22) (the limitation "for guiding cutting" is considered intended use, and a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963)).

In regard to claim 3, the fitting 34 and pipe section assembly 22 is an integral body (there are all one permanently connected piece).

In regard to claim 4, the close fit device 88 may be removably secured to the fittings by the fastening assembly.

4. Claims 1-4 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Cretzler.

In regard to claim 1, Cretzler discloses a fitting 24 and pipe section assembly 14 that is capable of being installed in tubing of a jetted bath to render the tubing adaptable to accept a close fit device 27, comprising:

a pipe section 10 having a center segment (between indicators 36 and 38) integrally

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formed with inlet and outlet end portions (ends of 10 to the left and right of what is shown in the drawings) of the pipe section 10;

wherein the pipe section includes indicia 36, 38.

In regard to claim 3, the fitting 24 and pipe section assembly 14 is an integral body (there are all one connected piece) (The term "integral" does not require a unitary one-piece structure. In re Kohno, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965)).

In regard to claim 4, the close fit device 27 may be removably secured to the fittings 24 by a fastening assembly 26.

In regard to claim 25, wherein the center segment 10 is coupled to the tubing (before it is cut out).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowalski in view of McLaughlin. Kowalski discloses a fitting as described above with a seal 80 which is positioned between the fitting 31 and the flange 34. Kowalski also discloses a nut 14. However, Kowalski does not disclose that the nut is split or that there is a split nut retainer. McLaughlin teaches supplying a pipe section 1 and fitting with a union nut 10 and a split nut retainer 15 in order to more easily facilitate assembly of the pipe assembly. Therefore it would have been

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obvious to a person having ordinary skill in the art at the time the invention was made to modify the nut of Kowalski to include a split nut, as taught by McLaughlin so that the fitting could be assembled more easily by allowing the nut to be placed over the fitting at numerous points during the assembly process.

2. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kowalski in view of Thweatt. Kowalski discloses replacing one pipe section 10 with another 88. However, Kowalski does not specifically disclose that one of the devices is a heating device. Thweatt teaches that placing a heating device (fig. 14) between tubing is common and routine in the art. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the devices of Kowalski to include heating devices, because the practice of placing heating devices in line with a tubing sections is common and routine in the art, as demonstrated by Thweatt.

3. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kowalski in view of Luff. Kowalski discloses a fitting as described above. However, Kowalski does not disclose that the pipe section can be replaced with a T-fitting. Luff teaches replacing a linear pipe (fig. 4) with a T junction having a transverse pipe branch 2 which may be removably fastened to a transverse tubing segment of a jetted tub in order to increase the versatility of the pipe section assembly. . Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the pipe section of Kowalski to include a T junction, as taught by Luff, in order to increase the way in which the pipe section assembly can be utilized.

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*Allowable Subject Matter*

4. Claims 10-19, 23-24 and 26-27 are allowed.

*Response to Arguments*

Applicant's arguments with respect to claims 1, 3-9 have been considered but are not persuasive. Applicant argues that Kowalski does not provide indicia "for guiding cutting of the pipe section". However, Kowalski does have indicia (the welds are bumps or marks on the pipe surface, which are indicia) and "for guiding cutting" is an intended use limitation, which is given little patentable weight as explained above in the rejection section of the action.

*Conclusion*

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

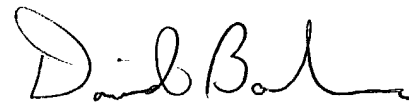
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Bochna whose telephone number is (703) 306-9040. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703) 308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

A handwritten signature in black ink, appearing to read 'David Bochna', with a stylized, flowing script.

**David Bochna**  
**Primary Examiner**  
**Art Unit 3679**  
**July 23, 2004**